

**DIRREMASCH OCHEBIR and UCHERREMASCH
MUKUI, Plaintiffs**

v.

**MUNICIPALITY OF ANGAUR, DIB MALKUREONG,
URIMECH, UCHERBELAU JOSEPH, FRANCISCO
KIKUCH, and TRUST TERRITORY OF THE
PACIFIC ISLANDS, Defendants**

Civil Action No. 345

Trial Division of the High Court

Palau District

July 28, 1969

Action to quiet title to certain lots on Angaur Island, Palau District. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that burden of proof was upon the plaintiff in quiet title action and plaintiff's failure to present claims in time and through failure of proof had not established title to land in question.

1. Real Property—Quiet Title—Burden of Proof

The burden of proof is upon a plaintiff in a quiet title action and he can recover only by showing that title is in himself, not by showing a weakness in a defendant's title.

2. Estoppel—Generally

Where person claiming ownership of land stood by and watched the sale of such land to a third party without objection, he was estopped to later object to such sale.

3. Trust Territory—Suits Against

Land Management Regulation No. 1 provided a consent to sue the Trust Territory government and to recover land held by the Alien Property Custodian and there is and was no right to sue the Trust Territory government or its Alien Property Custodian excepting under such regulation.

4. Former Administrations—Redress of Prior Wrongs

A nation which takes over land from another nation is not required to correct alleged wrongs done by the nation formerly holding the land or by others while the land was in the hands of the first nation.

5. Former Administrations—Redress of Prior Wrongs—Exception to Applicable Doctrine

If an alleged wrong occurred so recently before the taking over of lands by the second nation that an individual had no time to appeal to the courts, the courts of the nation which took over the land, could attempt to redress the alleged wrong.

6. Real Property—Quiet Title—Laches

Extensive delay without good excuse by the plaintiffs and to the prejudice of the defendants and their predecessors clearly constituted laches which barred recovery of land in question by the plaintiffs.

CLIFTON, *Temporary Judge*

FINDINGS OF FACT

The Court finds as follows:—

1. That it is not true that prior to the accession of the German government to lands in the Trust Territory, including Angaur Island, or that prior to the delivery of a quitclaim deed dated on or about June 8, 1962, on Lot 315 on Angaur Island by the Trust Territory government (as shown on Palau District Map No. PAL-1, Serial No. 355) that the said Lot 315 was owned by the Kedidai Clan, but that it is true that at both of said times the said lot was and now is public land owned by the Municipality of Angaur.

2. That it is not true that prior to the accession of the German government to lands in the Trust Territory, including Angaur Island, or that prior to the delivery of a

quitclaim deed, dated on or about June 8, 1962, by the Trust Territory government (as shown on Palau District Map No. PAL-1, Serial No. 355), that the said Lot 316¹ was owned by the Kedidai Clan, but it is true that at both of said times the said lot was and now is public land owned by Ngermasch Village.

3. That it is not true that prior to the accession of the German government to lands in the Trust Territory, including Angaur Island, or that prior to the delivery of a quitclaim deed dated on or about June 8, 1962 (as shown on Palau District Map No. PAL-1, Serial No. 355) on Lot 317 on Angaur Island by the Trust Territory government that the said Lot 317 was owned by the Kedidai Clan, but it is true that the said lot at both of said times was and is owned by the Tmiu Clan, represented by Dib Malkureong.

4. That it is not true that prior to the accession of the German government or that prior to the delivery of a quitclaim deed on or about June 8, 1962 (as shown on Palau District Map No. PAL-1, Serial No. 355) by the Trust Territory government on Lot 326 on Angaur Island, that the said Lot 326 was owned by the Kedidai Clan, but it is true that at both of said times said lot was owned by the Kedam Clan and that Joseph Ucherbelau has succeeded to the rights of said Kedam Clan on said lot.

5. That it is not true that prior to the accession of the German government to lands in the Trust Territory including Angaur Island or that prior to the delivery of a quitclaim dated on or about June 8, 1962, by the Trust Territory government on Lot 338 on Angaur Island (as shown on District Map No. PAL-1, Serial No. 355) that the said Lot 338 was owned by the Kedidai Clan but it is true that at the time of the accession of the German gov-

¹ Changed from "Lot 315" to "Lot 316" by "Nunc Pro Tunc Order Supplementing Judgment Order Entered July 28, 1969" entered Oct. 23, 1969 by R. K. Shoecraft, Chief Justice.

ernment said lot was owned by the Kedam Clan, and that it transferred its rights therein to Francisco Kikuch so that prior to the delivery of said quitclaim deed he was the owner of said Lot 338, and that Joseph Ucherbelau has succeeded to the rights of Francisco Kikuch.

6. That it is true that the German government purchased Angaur Island from the owners of said island and held possession of the same as the owner until the Japanese government succeeded to the rights of the German government in 1914, and that thereafter the Japanese government was in possession of Angaur Island as the owner of the same until 1944, and thereafter in 1944 the American government and particularly the Trust Territory of the Pacific Islands succeeded to the rights of the Japanese government and was in possession of Angaur Island as the owner of the same, excepting that the Trust Territory government on or about June 8, 1962, executed and delivered quitclaim deeds as to some of the lots on said island including the quitclaim deeds heretofore mentioned on Lots 315, 316, 317, 326 and 338 and having clarified its holding of the said Angaur Island by a vesting order dated September 24, 1951.

7. That the Kedidai Clan is estopped to deny that Joseph Ucherbelau is the owner of said Lot 326 by reason of the fact that the Kedidai Clan and the members thereof with knowledge of the facts stood by and did nothing to assert the alleged interest of said Kedidai Clan in Lot 326 during all the time surrounding the transfer of Lot 326 from the Kedam Clan to said Joseph Ucherbelau so that he was prejudiced thereby by reason of the fact that he paid \$1000 for said lot and that the said sum was accepted and expended by said Kedam Clan.

8. That the Kedidai Clan is estopped to deny that Joseph Ucherbelau is the owner of said Lot 338, by reason of the fact that the Kedidai Clan and the members thereof

with knowledge of the facts stood by and did nothing to assert the alleged interest of said Kedidai Clan in Lot 338 during the time surrounding the transfer of Lot 338 from Francisco Kikuch to said Joseph Ucherbelau so that he was prejudiced thereby by reason of the fact that he paid \$1000 for said lot and that sum was accepted and expended by said Kikuch.

9. That the plaintiff, the clan, has been guilty of laches which will bar a recovery by it in this action as to the parts of Lots 315, 316 and 317 involved herein in that since the said vesting order dated September 24, 1951, and for a long time prior thereto and up until the time of the filing of this action, the Kedidai Clan and the members thereof did not commence an action or otherwise assert the claims of the Kedidai Clan to said parts of Lots 315, 316 and 317, and thereby the rights of the Municipality of Angaur and Ngermasch Village were prejudiced by withdrawing their claims to said lots under Land Management Regulation No. 1 and accepting quitclaim deeds on said lots, and the defendant Trust Territory of the Pacific Islands suffered prejudice because of the fact that the Trust Territory government constructed a school building and two teachers' houses on Lots 316 and 317 and has expended moneys in plans to construct a power plant on Lot 317 and a new school on Lots 316 and 317.

10. That the Kedidai Clan is guilty of laches which will bar a recovery from Joseph Ucherbelau as to Lots 326 and 338, heretofore mentioned, in that since the time of said vesting order of September 24, 1951, and for a long time prior thereto and up to the time of the filing of this action, the Kedidai Clan and the members thereof did not commence an action or otherwise assert the claims of the Kedidai Clan to said Lots 326 and 338, and thereby the rights of Joseph Ucherbelau have been prejudiced in that he purchased said lots for the sum of \$1000 with no knowledge of

the alleged rights of the Kedidai Clan or that said Kedidai Clan claimed ownership of said lots.

OPINION

This is an action brought on behalf of the Kedidai Clan to quiet title to parts of five lots on Angaur Island in the Palau District. After about 1903, the German government commenced extensive operations to mine the phosphate on the island after allegedly purchasing it from the heads of the clans. After payment of the original sums no rental for the land or royalty for the phosphate was paid. After World War I, Micronesia, including Angaur Island, was taken by the Japanese from the Germans and at first held by them under a mandate from the League of Nations, but Japan later claimed absolute ownership. According to some anthropologists, the Japanese in 1922 paid some 1,739,960 *yen* to the German government for the rights and land on Angaur Island. However, like the Germans, the Japanese paid nothing to the people of Angaur as rental for the land or royalty for the phosphate.

After the American occupation, it was decided to allow the former owners of the land to file claims under Land Management Regulation No. 1, and to regain the lands taken from them by the Japanese after March 27, 1935, without adequate compensation. A survey was made by anthropologists of the Trust Territory government to aid in the return to the former owners. However, it was then decided that most of the lands, including those involved herein, should be quitclaimed to the former owners, or their successors, upon their withdrawing their claims under Land Management Regulation No. 1 so that it would be unnecessary to hold the hearings required under said regulation. Some 113 quitclaim deeds were thus given covering lots on Angaur Island including a large number given to the Kedidai Clan. The Kedidai Clan did not file claims to the

five lots here in question and so did not receive quitclaim deeds. However, claims were filed by those whom the anthropologists had shown were the owners of the lots and quitclaim deeds were given to them when they withdrew their claims. The court has found that the defendant Angaur Municipality is the owner of one parcel, Ngermasch Village is the owner of another, the Tmiu Clan, represented by Dib Malkureong, is the owner of another, and the defendant Joseph Ucherbelau is the owner of the other two, having purchased one lot from Francisco Kikuch and another from the Kedam Clan. Angaur Municipality, Ngermasch Village and the Tmiu Clan hold quitclaim deeds for their lots from the Trust Territory government, and Francisco Kikuch and the Kedam Clan also received quitclaim deeds for their respective lots from the Trust Territory government. *It is not true that the plaintiff, the Kedidai Clan, had owned any of the parcels in question before the coming of the Germans, the Japanese, and Americans to Angaur.* Instead the parcels had been respectively owned then by the Angaur Municipality, Ngermasch Village, the Tmiu Clan and as to two lots by the Kedam Clan and the quitclaim deeds were given in recognition of the prior ownership.

This opinion will go into some detail in discussing the testimony and exhibits and the many legal and equitable principles involved in this case.

[1] The burden of proof is upon a plaintiff in a quiet title action. He can recover only by showing that title is in himself, not by showing a weakness in a defendant's title. See § 83, Quieting Title, 44 Am. Jur. 67, especially p. 69, wherein it is said:—

“As frequently stated, the complainant's right to relief depends upon the strength of his own title, not upon the weakness of the title of his opponent. Having failed to establish title in himself, he cannot complain of insufficiency of the evidence upon which the court adjudged title to be in the defendant.”

The court will discuss separately the testimony as to the ownership of the parcels involved in this action. The testimony showed that prior to receiving any claims for land on Angaur Island the Trust Territory government had surveys made, and Harry Uyehara, a government anthropologist at the time of the making of the surveys, did research as to the ownership of all of the parcels on Angaur Island, based on the ownership of the respective lots prior to the German accession to Micronesia. Uyehara recorded his findings on a map, a copy of which was received in evidence as Defendants' Exhibit #13. Similar findings were recorded on another map, Defendants' Exhibit #2.

Besides the very sketchy testimony on both sides of the issue from the witnesses as to the ownership of the land in question, some seventy years ago, before the accession of the German government, and the admissions as to ownership contained in the admissions in the Pre-Trial Order, there are many papers or documents that have been received in evidence which throw some light on the ownership of the five parcels of land in question. In some cases the information they give is not only as to claims made as to some of the lands, but also, and more importantly, the *failure* to make claims to said lands. We shall here mention chronologically some of these papers or documents and then discuss the evidence in regard to the separate parcels of land. It should here be noted that plaintiff's claims are delineated on Defendants' Exhibit #1, as part of Lot 315, part of Lot 316, part of Lot 317, part of Lot 326, and the whole area of Lot 338. Defendants' Exhibit #20 was received in evidence (transcript page 144), and depicts some claims that were filed with a Navy Land Titles Investigating Commission, but which were not acted upon. This exhibit is a map dated 21 February 1948. It should be noted that the numbers on the

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map are apparently claim numbers and are not the lot numbers on Defendants' Exhibit #1.

Defendants' Exhibits #15 through 19 are the claims mentioned above, that were recorded on Defendants' Exhibit #20.

Plaintiffs' Exhibit #6 is a map dated December 8, 1949. Apparently it is the same as Defendants' Exhibit #20.

Defendants' Exhibit #2 is a map numbered "Serial #355", and is dated as being surveyed on July 20, 1950, and drawn June 8, 1962, and filed with the Clerk of Courts on July 31, 1963. It has outlined on it in blue ink what is apparently the parts of Lots 315, 316, 317, 326 and 338 claimed by plaintiffs as depicted on Defendants' Exhibit #1.

Defendants' Exhibit #13 is a map which was made by the District Land Office and which bears the data as to ownership compiled by the anthropologist Uyehara in 1950, as previously noted. Although the numbers on this map (Defendants' Exhibit #13) are not the same as the lot numbers on the map called Serial #355 (which has the same lot numbers as are on Defendants' Exhibit #1), the names of the owners are the same as on Serial #355 which is the basis of Defendants' Exhibit #2, which also shows the owners of the land.

Plaintiffs' Exhibit #3 shows land rental payments made for lands other than phosphate lands, used by the Japanese and for which compensation in the form of rental was paid under the Angaur Mining Trust Agreement. The rental areas are depicted on a map which was received in evidence as Plaintiffs' Exhibit #4. We shall now discuss the aforesaid exhibits and the testimony in relation to the individual parcels involved in this action.

Lot 315.

The plaintiffs only claim a small part of Lot 315 as can be seen from Defendants' Exhibit #1 which was stipulated

at the pre-trial conference shows the plaintiffs' claims. Defendants' Exhibit #20 shows that the land which was there numbered as #1 and contained all of Lot 315 (as well as part of Lots 316 and 317) was claimed by the Uheremash Clan or Tribe. The claim covering this (Defendants' Exhibit #16) was called a "joint claim of the Uheremash tribe". It was headed by Axiol the head of the Uheremash tribe. Apparently the tribe contained a number of clans, for listed as representing the clans are the following:—

Ngurungi for the Ngeruhelbau Clan
Uldikes for the Ngerehelbuheb Clan
Melekei for the Kedam Clan
Oobir (f) for the Kedidai Clan
Askivy for the Metuker Clan
Osismerang for the Ngeuu Clan.

It should be noted that the recommendation on Defendants' Exhibit #16 (never acted upon), signed by Lt. Nowak, a member of the Land Titles Investigating Commission was as follows: ". . . it is recommended that this claim for the three parcels of land as indicated be given favorable consideration except for the portion of land marked with the number "1", which should be reserved for the use of the general public and remain as government land as much of the same parcel as would be necessary for this purpose." From this claim it may be observed that the claim was not filed by the Kedidai Clan alone but by a number of clans as indicated, so that it might be deduced that the land was not owned by one clan alone but was land that was public land or jointly owned or used by a number of clans. It should also be noted that a claim for other lands *was* made to the Land Title Investigating Committee by the *Kedidai* Clan (Defendants' Exhibit #18) for the parcels marked numbers 22, 23, 24, 25,

26, and 27 on Defendants' Exhibit #20 and none of these cover the lands in question in this action. That claim (Defendants' Exhibit #18) was filed by Axiol the then head of the Kedidai Clan and by the following clan members: Antonio, Badow, Oobir (f), Teresa (f) and Blumel (f). Another clan filing a claim (Defendants' Exhibit #17) as to other lands depicted on and numbered on Defendants' Exhibit #20 was the *Kedam* Clan which claimed some lands marked 16, 17, 18, 19, 20, and 21. The leader of this clan was Melekei and listed were 21 other members of the Kedam Clan.

As to Defendants' Exhibits D2 and D13 (which, according to some testimony is based on the ownership before German times), the report of the anthropologist Uyehara as to the ownership of the land, shows Lot 315 listed as belonging to the Angaur Municipality, reflecting that it was public land.

Finally, no claim was filed under Land Management Regulation No. 1 by the Kedidai Clan as to Lot 315, although the Kedidai Clan did file claims as to a large number of other parcels of property and received quitclaim deeds when the clan filed releases of its claim signed by Ngeskabei (see Defendants' Exhibit #14 which are the releases and quitclaim deeds). However, a claim *was* filed by the Angaur Municipality and upon the withdrawal of said claim a quitclaim deed was given by the Trust Territory government to the Angaur Municipality.

From the testimony and all of the above evidence the Court has found that Lot 315, including the part claimed by the Kedidai Clan in this action, was never owned by the Kedidai Clan, but was public land and owned by the Angaur Municipality even prior to the quitclaim deed to it, and that it is now the owner because of its prior ownership and also by reason of the quitclaim deed to it by the Trust Territory government.

LOT 316.

Defendants' Exhibit #20 shows that part of Lot 316 was contained in the part designated as Claim #1, the same as part of 315 heretofore mentioned as to Lot 315 and that said claim #1 was that of the Uheremash Tribe. As to the greater part of Lot 316, however, that was designated #8 on Exhibit #20 claimed by the Metuker Clan. The specific claim has not been received in evidence as were Defendants' Exhibits #15 through 19. The same observations as to the filing by the Kedidai Clan and as to the Angaur District of claims recorded on Defendants' Exhibit #20, can be made as were made in relation to Lot 315, that is, Kedidai made claims to other lands on Defendants' Exhibit #20, but stood by while the Uheremash Tribe as to #1 and the Metuker Clan made claim as to #8 on that Exhibit—that is, part of Lot 316.

As to Defendants' Exhibits #2 and 13, the land known as Lot 316 was designated on Defendants' Exhibit #13 as #38 and listed as belonging to the Ngermasch Village and listed on Defendants' Exhibit #2 as Lot 316 and there shown as belonging to Ngermasch Village. As to Defendants' Exhibit #4, showing areas on which rent of non-phosphate lands were paid under the Angaur Mining Trust Agreement, part of Lot 316 is listed as #39, with rental paid to Makuryong, the head of the Tmiu Clan as shown on the part of said exhibit designated "Acreage of Rental Areas." As will be noted hereafter other areas rented were rented by a number of other clans or individuals, including the Kedam Clan, and Francisco (Kikuch). This exhibit is dated March 20, 1953. The rental payments on the same part rented from Malkureong for the period April 15 to June 30, 1955, also show rental paid to Malkureong. However, this same exhibit (#3) shows that the \$142.84 paid to Malkureong was for the period of April 25, 1954, to April 24, 1955, instead of in

1953. The significance of Defendants' Exhibits #3 and #4 are that the Kedidai Clan did not receive any rental for Lot 316, but Malkureong did.

As with Lot 315, the Court has found from the testimony and from the above that Lot 316 was not owned by the Kedidai Clan prior to the German times, but was public land belonging to Ngermasch Village and that in addition Ngermasch Village claimed Lot 316 under Land Management Regulation No. 1 and was given a quitclaim deed on Lot 316 and that the Kedidai Clan, although claiming other lands and receiving quitclaim deeds therefor, did not claim or receive a quitclaim deed on Lot 316.

LOT 317.

Defendants' Exhibit #20, the so-called "General Land Claim Map of Angaur" shows that the portion of land covered by the later designation "Lot 317" was partly covered by the claims numbered 1 of the Uheremasch Tribe as noted with relation to Lot 315, claim 8 by the Metuker Clan as noted with relation to Lot 316, and parts of the land covered by Lot 317 were claimed on Defendants' Exhibit #20, under claim #31 by the Ngeuu Clan, and under #35 by the Ngeruhelbelu Clan. Defendants' Exhibit #19 is the claim of the Ngeuu Clan covering among other lands its claim to #31. The actual claim of the Ngeruhelbelu Clan is not in evidence, excepting as it may be depicted on Defendants' Exhibit #20. In any event, although the Kedidai Clan filed its claim (Defendants' Exhibit #18) as to other lands, it did *not* at this time, February 1948, file a claim as to any of the lands in question with the Land Titles Investigating Committee.

As to Defendants' Exhibits #2 and #13 which are maps recording the findings of the anthropologist Uyehara as to the ownership of the lands on Angaur Island, said maps show that on Exhibit #13 the parcel

designated #39 (which covers some of Lot 317) was owned by Ngermasch Village and that #40 was owned by the Tmiu Clan.

Defendants' Exhibit #2 shows that Lot 317 was owned by the Tmiu Clan.

As to Plaintiffs' Exhibit #4 showing payments made for areas for which rent was paid under the Angaur Mining Trust Agreement, this shows that rent was paid for the area which is Lot 317 (plus a great deal of adjacent area) to the Kedam Clan and some was paid for part of the area which is Lot 317 to the Tmiu Clan. The area delineated as rented, in other words, does not have exactly the same boundaries as Lot 317.

From the testimony and the above the Court has found that Lot 317 was not owned by the Kedidai Clan prior to the German times, but that it was owned by the Tmiu Clan and that in addition to that the Tmiu Clan, represented by Dib Malkureong, is also the owner by reason of the quitclaim deed of Lot 317 from the Trust Territory.

LOT 326.

Defendants' Exhibit #20, the General Land Claim Map of Angaur, dated February 21, 1948, shows that the area of Lot 326 was partly claimed by the Kedam Clan under a claim number 18, Defendants' Exhibit #17, partly by the Ngeuu Clan under claim numbered 31, Defendants' Exhibit #19 (see the remarks about this claim under Lot 317 above) and the claim of the Ngeruhelbelu Clan, #35 (also see the remarks about this claim under Lot 317 above). As mentioned under Lot 317 this latter claim was not introduced into evidence excepting as it was depicted on Defendants' Exhibit #20. No claim to this lot, therefore, was made by the Kedidai Clan to the Land Titles Investigating Committee, though the Kedidai Clan *did* claim other lands (Defendants' Exhibit #18).

As to Defendants' Exhibits #2 and #13, which reflect the findings of the anthropologist Uyehara, Exhibit #13 shows that the area covered by Lot 326 was listed as part of parcel #49, owned by the Kedam Clan, while Exhibit #2 also shows that Lot 326 was listed as belonging to the Kedam Clan. However, Lot 326 on Defendants' Exhibit #2 does not have the same boundaries as Defendants' Exhibit #1. It is probable that this difference (or mistake) was caused by inserting the Lot number 326 in the wrong lot on Defendants' Exhibit #2, or rather in not placing the number 326 to the north of Lot 338 as was done on Defendants' Exhibit #1, in addition to showing part of Lot 326 to the east of Lot 338.

As to Plaintiffs' Exhibit #4, this shows that the area of Lot 326 was rented to the Japanese Company by the Kedam Clan under the Angaur Mining Trust Agreement.

From the testimony and the above exhibits, the Court has found that Lot 326 was not owned by the Kedidai Clan prior to the German times, but was owned by the Kedam Clan and that it was sold by the Kedam Clan to the defendant Joseph Ucherbelau.

However, the plaintiff claims that the Kedam Clan is part of the Kedidai Clan, and, therefore, that Lot 326 was in effect the property of the Kedidai Clan, and that the transfer by the Kedam Clan was invalid.

This contention is not supported by the testimony. Although some of the officers or leaders of the Kedidai Clan were also officers or leaders of the Kedam Clan as noted in the report of Uyehara (part of Defendants' Exhibit #6) showing the "clan councils of Angaur Island", the members of the council were *not* identical and were not the same in rank. An examination of the list of many of the clan councils shows that a number of individuals are on the clan councils of more than one clan. More significant than this is the fact that Defendants'

Exhibits #20, #2 and #13 all show that Kedidai owned or claimed some land and Kedam other land—and each clan was separately listed on these maps—that is, some land was shown as Kedam land, and some was shown as Kedidai land. Defendants' Exhibits #18 and #17 very definitely show ownership or claims—one by the Kedidai Clan and one by the Kedam Clan and the persons making the claims on behalf of these clans are different—the Kedam claim having 21 members of the clan listed besides the leader, or head of the clan, Melekei—who are not the same persons listed on the Kedidai claim, Exhibit #17.

The testimony also shows that the two clans, Kedam and Kedidai, separately signed through their separate heads the Angaur Mining Trust Agreement and its amendment and that the payments made under the Mining Trust Agreement have not been made to the same people but were paid and distributed separately to the Kedam Clan and the Kedidai Clan. Furthermore, the rental payments shown on Plaintiffs' Exhibits #3 and #4 were made to the Kedam Clan and its Ulchesias and *not* to the Kedidai Clan.

The testimony also shows that the heads of the Kedam Clan and the Kedidai Clan, Kesol and Melekei, got together and discussed the boundaries of the properties of the two clans. Finally, and most conclusively, when the claims were made under Land Management Regulation No. 1, as to the properties involved herein besides a large number of other parcels on Angaur Island, the heads of the two clans filed separate claims and filed separate releases, and separate quitclaim deeds were given to the Kedam Clan and to the Kedidai Clan. It is true that the witnesses Tulop and Ngeskebei have tried to make it appear that the people of Angaur and their leaders did not know what they were doing in filing claims, making releases and re-

ceiving quitclaim deeds, but their testimony in this respect is utterly unbelievable. Tulop's testimony, especially, in which he attempted to show the invalidity of the receipt of the quitclaim deeds by the Kedidai Clan and by his clan by reason of the lack of understanding and of the alleged failure at the time of the signing of the releases to translate the release he signed, and thus led to the conclusion that he didn't know what he was doing cannot be given any weight. As a magistrate, a court officer—as a witness and as a leader, he participated in the presentation of many claims and the signing of many papers, including the letter to the United Nations Mission. He also signed as a witness to the claim for the Angaur District for the Main Roads, to the Land Claims Commission (Defendants' Exhibit #15) besides signing the release for the Ngerbasch Clan (Defendants' Exhibit #12) and Tulop also signed 19 times as a witness to the signatures of the heads of the clans to the Supplementary Agreement to the Angaur Mining Trust Agreement (Plaintiffs' Exhibit 5a). Under the circumstances, it is inconceivable that he did not understand what he was doing or that the other clans and their heads did not know what they were doing.

The fact remains that the Kedidai Clan made many claims—to the Navy and to the Trust Territory government—and finally received and accepted quitclaim deeds along with the other clans or individuals on Angaur Island but up to the time of this action the Kedidai Clan and its heads never made any claims to the lands in question and the Kedam Clan *did* make claims as to its lands including some of the lands in question as well as separately receiving its share from the Angaur Mining Trust Agreement and also separate rentals. The Court must find that the Kedidai and Kedam Clans are separate and that the Kedidai Clan, having no interest in the prop-

erty of the Kedam Clan, has no right to object to the sale by the Kedam Clan to Joseph Ucherbelau.

[2] Furthermore, having stood by and watched the sale to Joseph Ucherbelau without objections, the plaintiff and the Kedidai Clan are estopped to now object to the sale to Ucherbelau of Lot 326. See *Akos v. Orem*, 3 T.T.R. 504.

Lot 338.

Defendants' Exhibit #20, the General Land Claim Map, shows that the area covered by Lot 338 was claimed under claims numbered on said map as #18 by the Kedam Clan, #34 by the Ngeruhelbelu Clan and #6 by the Metuker Clan. It was not claimed by the Kedidai Clan although said Kedidai Clan was shown as claiming numerous other parcels, notably 22, 23, 24, 25 and 26, which are claimed under Defendants' Exhibit #18.

As to Defendants' Exhibits #2 and #13, based on the report of the anthropologist Uyehara, Defendants' Exhibit #13 shows that Lot 338 is listed there under #61 as belonging to Francisco, that is, Francisco Kikuch. Defendants' Exhibit #2 also shows that the owner is Francisco. As to Plaintiffs' Exhibits #3 and #4, the record of rental payments of non-phosphate lands under the Angaur Mining Trust Agreement, Lot 338 is there shown as #61, with the rental payments going to Francisco in 1953, 1954, and 1955. All of this lends support to the claim that Lot 338 was given to Kikuch with the consent of Kesol, Tmeliu and Melekei, the father of Kikuch.

As with the sale of Lot 326 to Joseph Ucherbelau, the Kedidai Clan is estopped to deny the passage of title from Kikuch to Ucherbelau, because the clan stood by without objection to the sale. See: *Akos v. Orem*, 3 T.T.R. 504. As a matter of fact, Defendants' Exhibit #31A shows that the quitclaim deed by Kikuch to Ucherbelau was witnessed by Ngeskebei, the acting head of the Kedidai

Clan! Ngeskebei, it may be noted again, was the acting head of the Kedidai Clan, who signed all of the releases of the claims of the Kedidai Clan covered by Defendants' Exhibit #14, and received the quitclaim deeds which were received into evidence as Defendants' Exhibit #14.

What was said above as to Lot #326 in regard to the contention of the Kedidai Clan that the Kedam Clan was only a part of the Kedidai Clan and did not own land separately from the Kedidai Clan is applicable here to this land which formerly belonged to the Kedam Clan. The evidence shows that the two clans separately owned many parcels of land, made separate claims to their parcels, the Kedam Clan received rental for part of the land involved in this dispute and the Kedam Clan was paid separately under the Angaur Mining Trust Agreement, and the releases to the Trust Territory were separately signed by the head of the Kedam Clan and quitclaim deeds were made by the Trust Territory to the Kedam Clan of various parcels of land, while the Kedidai Clan also got quitclaim deeds upon the signing of releases. The Court, therefore, has found that the two clans are separate and have had separate ownership of property.

* * *

While, as above indicated, the Court has found that the Kedidai Clan *never* owned the land involved in this action and so is not entitled to the "return" of the land, the plaintiffs spent considerable time in attempting to prove that the Germans never purchased the land, the Japanese never purchased the land, and, therefore, that the Trust Territory government never acquired title to the land which it attempted to convey by quitclaim deeds. It is, therefore, appropriate to comment on plaintiffs' evidence on this point.

In his argument to the effect that the Trust Territory government never acquired title, counsel for the plain-

tiffs has cited a large number of cases *which are appeals from the determination of ownership made by Land Title Officers from title determinations made under Office of Land Management Regulation No. 1*. In many of these cases the decisions held that as the Japanese government or a Japanese corporation had not paid adequate compensation for the land that the land should be returned to the original owner. Said decisions were quite proper *when made by the High Court upon appeals made from determinations made under Office of Land Management Regulation No. 1*, because Policy Letter P-1 provided:—

“Land transfers from non-Japanese private owners to the government, Japanese corporations or Japanese nationals since March 27, 1935, will be subject to review. Such transfers will be considered valid unless the former owner (or heirs) establishes that the sale was not made of free will and just compensation was not received. In such cases, title will be returned to the former owner upon his paying in to the Trust Territory government the amount received by him.”

[3] Said land management regulation thus provided a consent to sue the Trust Territory government and to recover land held by the Alien Property Custodian. However, the plaintiff did *not* file a claim under Land Management Regulation No. 1, but as previously noted, claims were filed by others—the Angaur Municipality, Ngermasch Village, the Tmiu Clan, the Kedam Clan and Francisco Kikuch (and later withdrawn by them when they received quitclaim deeds). Therefore, the cases cited by plaintiffs are inapplicable. There is and was no right in the plaintiffs or anyone else to sue the Trust Territory government or its Alien Property Custodian, *excepting under Land Management Regulation No. 1*. See *Alig v. Trust Territory*, 3 T.T.R. 603. See also, *Rivera v. Trust Territory*, 4 T.T.R. 140.

Even if this were an appeal from a determination made under Land Management Regulation No. 1, the plaintiffs

have not shown by a preponderance of the evidence that the land was not sold to the German government. There is a conflict in the testimony but the Court has found that Angaur Island was sold to the Germans. The testimony and the documents in evidence indicate that the Germans used the land in any way they saw fit and contended that they owned the island. The same position was taken by the Japanese. Neither the Japanese nor the Germans paid anything excepting the original purchase price either for the phosphate, the mining of phosphate, or for rental of any of Angaur Island. The burden of proving the contention that the land was not purchased and other contentions supporting the plaintiffs' claim of ownership is on the plaintiffs, and the Court must find that the evidence which plaintiffs have produced, after almost seventy years after the Germans came to Angaur Island, that the Germans and the Japanese, and finally the American government had no right in the land has not proved plaintiffs' contentions by a preponderance of the evidence.

Even though it might be held that the lands in question were never purchased by the German government or the Japanese government or a Japanese corporation, the plaintiffs cannot prevail for another reason which is supported by many authorities. The Court has found, and it is supported by much testimony, including especially Plaintiffs' Exhibit #1, the letter of Gilbert Tulop to the U.N. Mission and Defendants' Exhibit #29, that the Germans and the Japanese held the island of Angaur and assumed complete ownership. As previously stated, no rent or royalties were ever paid either by the Germans or the Japanese. In other areas of Palau, the Japanese established a "*Daicho*", that is, a record of land titles. No *Daicho* was made for the island of Angaur because of the assumption that the land was owned by the Japa-

nese. It may be that to put a better face on the matter for the world some Japanese statements in their publications indicated that the phosphate mining was being done for the people of Angaur or that their rights were being respected but, as matter of fact, as previously noted the testimony shows that this was not the case. The Japanese, especially, refused to recognize any claims of the people of Angaur to their former lands, repeatedly rejecting such claims. The lands, therefore, became the property of the Trust Territory, and held by the Alien Property Custodian under the vesting order declaring that all Japanese property should be held by him.

[4] Besides the fact that no consent to sue the Trust Territory government (excepting the limited right of filing a claim and appealing a decision under Office of Land Management Regulation No. 1) has been given, even if it had appeared that the Germans or the Japanese did not pay an adequate sum for Angaur Island, this would give no right to have the Court set aside the alleged wrongful taking. It is well established in international law and supported by decisions of the High Court that a nation which takes over land from another nation is not required to correct alleged wrongs done by the nation formerly holding the land or by others while the land was in the hands of the first nation. See *Wasisang v. Trust Territory*, 1 T.T.R. 14; *Levi v. Kumtak*, 1 T.T.R. 36, and the decision on appeal *Kumtak v. Levi*, 1 T.T.R. 578; *Aneten v. Olaf*, 1 T.T.R. 606; and *Cabrera v. Trust Territory*, Saipan Civil Court of Appeals, Civil Action No. 2; *Rivera v. Trust Territory*, 4 T.T.R. 140, and 30 Am. Jur. 472, 473 (International Law, § 47).

[5] There is an exception to this rule to the effect that if an alleged wrong occurred so recently before the taking over by the second nation that an individual had no time

to appeal to the courts, the courts of the second nation, which took over the land, could attempt to redress the alleged wrong. This exception is noted in *Santos v. Trust Territory*, 1 T.T.R. 463 and a number of other cases. However, it has no application here, for the lands were taken over during the German times and this taking continued in early Japanese times.

This doctrine of international law, that it is not necessary to attempt to right alleged wrongs perpetrated by or under a nation formerly holding lands, however, is not dissimilar to the custom or law existing prior to the German occupation. It was well recognized that warfare was a method of obtaining land. Titles to land seized during the numerous wars between clans or lineages were recognized and have not been set aside. See *Land Tenure Patterns of the Trust Territory of the Pacific Islands*, p. 300 and 301. This concept of ownership of land obtained by warfare is not confined in Micronesia to Palau alone. As to the Marshall Islands, see *Land Tenure Patterns*, p. 34 and 35. As to the Truk District, see p. 164 of the same work.

In making the above observations, it must be said that the Court does not by pointing out that there are now no provisions under which the plaintiffs can recover lands which it is alleged were wrongfully taken from them by the Germans, or the Japanese, intend to withdraw from or weaken its findings that the plaintiffs and the Kedidai Clan *never* were the owners of the lands in question. As pointed out before, they failed to prove that the lands now belonged to the Kedidai Clan. Nor does the Court wish the fact to be overlooked that the Kedidai Clan when given the opportunity to file claims to the land in question under Office of Land Management Regulation No. 1 and Policy Letter P-1, did not file claims but other individuals or clans or municipalities did file claims.

Much of the argument of the plaintiffs in addition to the contention that there was no purchase from the original owners was that the fact that the Angaur Mining Trust Agreement was made and provides for payments for the phosphate and also for rent to be paid by the Japanese company for non-phosphate lands "proved" that the people of Angaur owned Angaur Island. The island up to this time was successively held by the Germans, the Japanese and the American government through the Supreme Commander and the Trust Territory. Many requests had been made for the release of these lands to the German government, the Japanese government, and finally to the American government. Some of these are shown by Defendants' Exhibits 15, 16, 17, 18 and 19, dated February 23, 1948. These requests were not granted. It was clearly not the intention of the Angaur Mining Trust Agreement or its amendments to transfer back to the original owners the land covered by the agreement, although the agreement gave to them the majority of the proceeds from the mining of the phosphate. The Court must find that the ownership did not pass and that it was subject to the vesting order of September 27, 1951. Office of Land Management Regulation No. 1, as affected by Policy Letter P-1, did provide a method of release to the former owners, but the title was in the Trust Territory and the quitclaim deeds conveyed good title to the parcels of land covered by the quitclaim deeds.

The Pre-Trial Order listed as one of the issues to be determined the question of laches, as follows:—

"Have the Plaintiffs or their predecessors in interest delayed their claims or objections to any of the matters herein described to the extent that they or either of them would be barred by laches from obtaining relief under a complaint filed March 25, 1966?"

[6] The Court must find that the plaintiffs are barred by laches from recovering in this action. As indicated, the vesting order was dated September 27, 1951. Since that time up to the time of the bringing of the action the plaintiffs took no steps to obtain title to the lands involved herein. Since then some of the lands were rented and rental received by the Tmiu Clan, by Francisco Kikuch and by the Kedam Clan. Claims were filed, releases signed and quitclaim deeds were received as set forth in paragraph 1 of the Pre-Trial Order, with the plaintiffs taking no part in getting title from the Trust Territory government. A great deal of time has elapsed since 1951 so that it is difficult to disprove the plaintiffs' claims as to what happened over a long period dating back more than 70 years to pre-German times, and the defendants have been prejudiced thereby. In addition as to Lots 315, 316 and 317, the Trust Territory government and others have made improvements, built schools and other buildings on these lands. As to Lots 326 and 338, after the quitclaim deeds were received, Joseph Ucherbelau purchased these lots from the holders of the deed for considerable sums of money. This delay without good excuse by the plaintiffs and to the prejudice of the defendants and their predecessors, clearly constitute laches, which bars recovery by the plaintiffs. A large number of decisions of the High Court have recognized and rendered judgment based on the doctrine of laches. See: *Kanser v. Pitor*, 2 T.T.R. 481. *Naoro v. Inekis H.*, 2 T.T.R. 232. *Rochunap v. Yosochune*, 2 T.T.R. 16. *Peretiu v. Karimina*, 3 T.T.R. 533. *Aneten v. Olaf*, 1 T.T.R. 606. *Baulol, K. v. Taidrik, L.*, 4 T.T.R. 152.

Because of these many different reasons, it must be held that the plaintiffs and the Kedidai Clan were not the former owners of the land involved in this action and that they cannot recover in this action.

JUDGMENT

It is ordered, adjudged, and decreed as follows:—

1. That the Municipality of Angaur is the owner and entitled to possession of all of that part of Lot 315 claimed by the plaintiffs and the Kedidai Clan as said claim is outlined in red ink on Defendants' Exhibit No. 1 in this action, and that the plaintiffs, the Kedidai Clan and its members have no right, title or interest in or to the said land.

2. That Ngermasch Village is the owner and entitled to possession of all of that part of Lot 316 claimed by the plaintiffs and the Kedidai Clan as said claim is outlined in red ink on Defendants' Exhibit No. 1 in this action, and that the plaintiffs, the Kedidai Clan and its members have no right, title or interest in or to said land.

That the rights of said Ngermasch Village in Lot 316 is subject to use rights given to the Municipality of Angaur as set forth in the defendants' claims in the Pre-Trial Order in this action.

3. That the Tmiu Clan, represented by Dib Malkureong, is the owner and entitled to possession of that part of Lot 317 claimed by the plaintiffs and the Kedidai Clan, as said claim is outlined in red ink on Defendants' Exhibit No. 1 in this action, and that the plaintiffs and the Kedidai Clan and the members thereof have no right, title or interest in or to said land.

4. That the said rights of Ngermasch Village and of the Tmiu Clan in and to said Lots 316 and 317 are subject to the rights of the Trust Territory to use part of Lots 316 which are presently occupied by a school building and two teachers' houses constructed by the Trust Territory government and to maintain two teachers' houses on Lots 316 and 317 as set forth in paragraphs 1 and 3 on page 2 and in paragraph 8 on page 9 of the Pre-Trial Order in this action.

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5. That Joseph Ucherbelau is the owner and entitled to possession of all of that part of Lots 326 and all of Lot 338 claimed by the plaintiffs and the Kedidai Clan as said claim is outlined in red ink on Defendants' Exhibit No. 1 in this action, and that the plaintiffs, the Kedidai Clan and the members thereof have no right, title or interest in or to said land.

6. Said Lots numbered 315, 316, 317, 326 and 338 are as shown on Palau District Map No. PAL-1, Serial No. 355, dated June 1, 1962, as filed in the Office of the Clerk of Courts, Palau District, but the only parts of said lots in controversy in this action and affected by this judgment order are the parts outlined in red ink on Defendants' Exhibit No. 1 in this action.

7. Defendants are entitled to judgment against the plaintiffs for their costs legally incurred in this action.